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OF THE
UNITED STATES OF AMERICA**

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January 9, 2017

VIA ELECTRONIC FILING

Mr. James Jones
Assistant Administrator, U.S. Environmental Protection Agency
Attn: 7101M
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

RE: Request for Nominations: Science Advisory Committee on Chemicals (81 Fed. Reg. 89092) (December 9, 2016); Docket No. EPA-HQ-OPPT-2016-0713

Mr. Jones:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, respectfully submits these comments to the U.S. Environmental Protection Agency (EPA) on the nominees being considered for appointment to the Science Advisory Committee on Chemicals (SACC).

The Toxic Substances Control Act (TSCA)¹, as amended by the Frank R. Lautenberg Chemical Safety Act for the 21st Century (LCSA)², and in accordance with the Federal Advisory Committee Act (FACA)³, established the SACC in order to provide independent scientific advice and expert consultation on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures supporting the implementation of LSCA.

The Chamber is pleased to note that the list of 29 nominees includes a mix of scientists from academia, the federal government, industry, nongovernmental organizations, and state governments. That is entirely appropriate, as FACA requires "the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee."⁴

¹ 15 U.S.C. § 2625(o).

² The Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L. No. 114-182, § 17(3), 130 Stat. 448, 504 (2016).

³ 5 U.S.C. App. 2

⁴ *See id.* § 5(b)(2).

The regulations that implement FACA reinforce this requirement⁵ and provide the following guidance on how to achieve a balanced committee membership:

The composition of an advisory committee's membership will depend upon several factors, including: (i) The advisory committee's mission; (ii) The geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (iii) The types of specific perspectives required, for example, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (iv) The need to obtain divergent points of view on the issues before the advisory committee; and (v) The relevance of State, local, or tribal governments to the development of the advisory committee's recommendations.⁶

This balance is extremely important, as the OMB Information Quality Bulletin for Peer Review states:

Balance. While expertise is the primary consideration, reviewers should also be selected to represent a diversity of scientific perspectives relevant to the subject. On most controversial issues, there exists a range of respected scientific viewpoints regarding interpretation of the available literature. **Inviting reviewers with competing views on the science may lead to a sharper, more focused peer review. Indeed, as a final layer of review, some organizations (e.g., the National Academy of Sciences) specifically recruit reviewers with strong opinions to test the scientific strength and balance of their reports.** [Emphasis added.]⁷

The National Academy of Sciences (NAS) similarly recognizes the importance of having a fair balance of perspectives represented on a scientific advisory panel:

Having a committee of highly qualified and capable individuals is a necessary but not sufficient condition for success. **It is also essential that the knowledge, experience, and perspectives of potential committee members be thoughtfully and carefully assessed and balanced in terms of the subtleties and complexities of the particular scientific, technical, and other issues to be addressed and the functions to be performed by the committee. . .**

The assessment of the necessary perspectives required for a particular study committee may also involve considerations that go beyond specific disciplinary scientific or technical concerns. For some studies, for example, it may be important to have an "industrial" perspective or an "environmental" perspective. This is not because such individuals are "representatives" of industrial or environmental

⁵ 41 C.F.R. § 102-3.30(c).

⁶ 41 C.F.R. Subpart B, App. A, § III.

⁷ EPA. Peer Review Handbook, 4th ed. (Oct. 2015), pp. 26, B-17 ("EPA conducts peer review of its products in accordance with the guidance in the OMB Peer Review Bulletin.").

interests, because **no one is appointed by the institution to a study committee to represent a particular point of view or special interest. [Emphasis in original.] Rather it is because such individuals, through their particular knowledge and experience, are often vital to achieving an informed, comprehensive, and authoritative understanding and analysis of the specific problems and potential solutions to be considered by the committee.** [Emphasis added.]

* * * *

Potential sources of bias are not necessarily disqualifying for purposes of committee service. Indeed, **it is often necessary, in order to ensure that a committee is fully competent, to appoint members in such a way as to represent a balance of potentially biasing backgrounds or professional or organizational perspectives.** For example, an individual may be selected to serve on a committee conducting a broad study of proposed new scientific missions in space, although the individual is a consultant or an employee of an aerospace company that has a general business interest in such matters. Or an individual may be selected to serve on a committee conducting a general study of research alternatives and funding priorities and opportunities in a particular scientific field, although the individual is a faculty member or research scientist at an institution that conducts research in that field. **In either case, while the factual circumstances might suggest the existence of a possible bias, this would not ordinarily disqualify an individual from service but would be a factor to be taken into account by the institution in the overall composition of the committee.**⁸

Chamber members will undoubtedly be affected by the information provided by SACC members to EPA, and therefore EPA should diligently evaluate the qualifications, expertise, balance, and potential biases of those nominated to serve on the committee. The Chamber strongly encourages EPA to establish a SACC that includes a fair balance of scientific perspectives. That will facilitate a robust discussion of the issues and result in outcomes that are more likely to gain general acceptance by the scientific community and stakeholders.

A fair balance will not be achieved, however, if EPA appoints a panel comprised largely of academics and representatives of state and federal agencies that regulate chemicals or support the regulation of chemicals, with only one or two scientists who can bring an industry perspective to bear. In our members' experience, academics – especially those who receive research grants from EPA or sister agencies – and scientists from state and federal agencies often share EPA's perspective, and ignore or discount evidence that does not support EPA's views. If EPA truly is interested in producing sound science, EPA will ensure that scientists who share EPA's perspective and scientists who have a different perspective are equally represented on the SACC.

⁸ NAS, "CONFLICTS OF INTEREST POLICY FOR COMMITTEES USED IN THE DEVELOPMENT OF REPORTS," May 2003, *available at*: <http://www.nationalacademies.org/coi/index.html>.

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The list of 29 scientists being considered for membership on the SACC is heavily weighted towards academics and government employees (18 scientists), which will make it difficult to achieve a fair balance of scientific perspectives on the SACC. EPA should therefore select additional scientists affiliated with industry from the original pool of nominees for further consideration. To paraphrase the NAS, those scientists, “through their particular knowledge and experience, [will be]...vital to achieving an informed, comprehensive, and authoritative understanding and analysis of the specific problems and potential solutions to be considered by the committee.”

The Chamber appreciates the opportunity to comment on this matter. If you have any questions, please contact me at (202) 463-5533 or at environment@uschamber.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "William L. Kovacs".

William L. Kovacs